

Charles A. Estrella**Zoning Board of Appeals Minutes – October 28, 2020**

A meeting of the Town of Freetown **Zoning Board of Appeals** was held on **October 28, 2020** virtually over Zoom. **Present:** Chairman James Frates, Swede Magnett, Nicolas Velozo, and Robert Jose.

Chairman Frates read the opening virtual meeting statement

Continued Public Hearing – 0 Braley Road

Chairman Frates called the public hearing back to order.

Chairman Frates explained that he received a letter from an abutter, Natalie Costa, which said they are opposed to the project. **Chairman Frates** said he also said he received a letter from Dale Knapp.

Dale Knapp, Boyle Associates, said that at the end of the last meeting they were tasked with demonstrating a hardship and providing some of the history of the parcel.

Mr. Knapp said the Costas have owned the property since the 1920's and that they had rights to an access to the parcel by the railroad. Mr. Knapp stated that the crossing was removed between 1930 and 1947 and not restored until 2015. Mr. Knapp said that the land was made inaccessible through construction of the railroad and the railroad did not uphold its responsibility to maintain access to the back parcel. Mr. Knapp said that the lack of frontage demonstrates a hardship that put an encumbrance on the property that was not an action of the underlying land owner.

Greg Dixon, Atlantic, said that the bisection of the railroad, which cut the property in half, is the hardship and that is why they are requesting a variance for frontage.

Chairman Frates asked which came first the railroad or the land and asked if Mr. Dixon is saying that the railroad came in an cut off access to the back of the parcel, making it unbuildable. Mr. Dixon said yes, that the land was there before the railroad and it the railroad had to go in that location, which created 2 lots and a hardship.

Chairman Frates asked if the landowners were compensated. Mr. Dixon said the land was taken in fee. Mr. Knapp added that the railroad was responsible for providing enduring access to the back parcel, based on the deed agreement, and they failed to comply for decades. Mr. Knapp said he believes the landowners were paying taxes on the back parcel, like they had access to it, during the period in which they did not have access.

Chairman Frates added that there variance is just to make the lot buildable. **Chairman Frates** said he had no more questions himself. **Mr. Magnett** said he did not have any questions.

Mr. Velozo asked if it was correct that the railroad split the property prior to the Costa Family owning it. **Mr. Knapp** said that was correct.

Mr. Jose asked if it was correct that when the property was purchased by the Costas, it was purchased as 2 separate lots. **Hamilton Carrier, Ironwood Renewables LLC**, said it was incorrect and that the property was always owned by the Costas and the railroad came in and split the property in half. **Ian Jukes** said the railroad split the property in 1840 and that it was owned under 1 deed but it was 2 separate parcels. **Chairman Frates** said the question is if the land was split when the Costas owned it or if the railroad was already there when it was purchased by the Costas. **Mr. Jukes** said the railroad was already there when the property was purchased by the Costas. **Chairman Frates** said, so the hardship was there when the lots were purchased and it was known to be an unbuildable lot. **Mr. Jukes** said the right to access/use the property was removed before there was zoning. **Mr. Knapp** said when the Costas purchased the property the back parcel was usable and then the access was subsequently removed. **Mr. Jose** asked if the variance you are requesting is that the lot was grandfathered in due to being a lot established prior to subdivision control. **Mr. Jose** added that the access is kind of a moot point because it was either a buildable lot established prior to Subdivision Control or it's not.

Chairman Frates said the applicant is requesting for a variance not an appeal of the Building Inspector's decision. **Chairman Frates** said he sees that as 2 separate issues **Mr. Knapp** said they were basing the variance request on the request for the 0 Costa Drive parcel.

Adrian Ortlieb, Ironwood Renewables, said it is critical to understand that the property was 1 property was bisected by the railroad in the 1840's and the property was not formally partitioned until the 1990's. **Mr. Ortlieb** said he believes the variance is appropriate if you view the history of the east side of the track as the same as the west side. **Mr. Jose** asked if their argument is that this was one lot until the 1990's. **Mr. Ortlieb** said record title reveals that. **Mr. Jose** asked who divided the lot. **Mr. Ortlieb** said it became 2 separate assessments. **Mr. Carrier** added that the Costa tried to reinstate the easement for years and in the 1990's they did not think they would get the easement back. **Mr. Jose** said if they split the parcel into 2 lots it would fall under current zoning. **Mr. Jose** added if it was 1 big lot then the entire parcel would have frontage. **Chairman Frates** said that creates their own hardship. **Mr. Velozo** said he believes the lots are owner under 2 different entities.

Mike Costa, the applicant, said what happened was his father inherited the land from his father and tried for years to get the crossing restored. **Mr. Costa** said in order to do Costa Drive properly he had to separate the parcels since he did not have a crossing. **Mr. Costa** said he took over the land from his father so that his father would not have the tax burden. **Mr. Costa** said that **Rep. Paul Schmid** helped him establish his rights to the crossing. **Mr. Costa** said that if the crossing had been there his father would not have had to separate the property to make Costa Drive.

Mr. Velozo made a motion to close the public hearing. **Mr. Magnett** seconded the public hearing. **Mr. Jose** abstained because he was not at the prior public hearing. The motion passed.

Chairman Frates said his opinion is that the hardship was created by the owner. **Mr. Velozo** said he is glad that the applicant provided additional information but as they expected the Costas bought this property after the railroad was there.

Chairman Frates asked if anyone would like to create a motion. **Mr. Velozo** made a motion to deny the variance application for 0 Braley Road due to hardships that were previously discussed. **Mr. Magnett** seconded the motion. **Mr. Jose** abstained. The motion passed.

Minutes from September 30, 2020

Mr. Velozo entertained a motion to approve the minutes from September 30, 2020. **Mr. Magnett** seconded. **Mr. Jose** abstained. The motion passed.

Mr. Velozo made a motion to adjourn. **Mr. Jose** seconded. The motion passed unanimously.